

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SYLVIA ANN LEWIS,

Plaintiff,

v.

CAROLYN W. COLVIN,  
Acting Commissioner of Social Security  
Administration,

Defendant.

Case No. ED CV 15-299-SP

MEMORANDUM OPINION AND  
ORDER

**I.**

**INTRODUCTION**

On February 19, 2015, plaintiff Sylvia Ann Lewis filed a complaint against defendant, the Commissioner of the Social Security Administration (“Commissioner”), seeking a review of a denial of a period of disability, disability insurance benefits (“DIB”), and supplemental security income (“SSI”). The parties have fully briefed the matters in dispute, and the court deems the matter suitable for adjudication without oral argument.

Plaintiff presents one disputed issue for decision, whether the

1 Administrative Law Judge (“ALJ”) properly considered plaintiff’s credibility.  
2 Memorandum in Support of Plaintiff’s Complaint (“P. Mem.”) at 3-10;  
3 Memorandum in Support of Defendant’s Answer (“D. Mem.”) at 1-10.

4 Having carefully studied the parties’ moving and opposing papers, the  
5 Administrative Record (“AR”), and the decision of the ALJ, the court concludes  
6 that, as detailed herein, the ALJ properly discounted plaintiff’s credibility.  
7 Consequently, the court affirms the decision of the Commissioner denying  
8 benefits.

## 9 II.

### 10 **FACTUAL AND PROCEDURAL BACKGROUND**

11 Plaintiff, who was forty-four years old on her alleged disability onset date,  
12 attended some college. AR at 31, 155, 166, 539-40. Plaintiff has past relevant  
13 work as a shipping checker and mail handler. *Id.* at 558-59.

14 Plaintiff filed four prior applications for DIB and/or SSI. *Id.* at 156-57. The  
15 first two applications, filed in 1993 and 1994, were denied initially or upon  
16 reconsideration. *Id.* Plaintiff filed the third and fourth applications in 1995 and  
17 2001, which were denied after a hearing. *Id.* at 58, 156.

18 On November 18, 2009, plaintiff filed applications for a period of disability,  
19 DIB, and SSI, alleging an onset date of December 24, 2008 due to diabetes,  
20 neuropathy, carpal tunnel, and leg pain. *Id.* at 144, 148, 155, 160. The  
21 Commissioner denied plaintiff’s application initially and upon reconsideration,  
22 after which she filed a request for a hearing. *Id.* at 68-72, 75-80.

23 On April 25, 2011, plaintiff, represented by counsel, appeared and testified  
24 at a hearing before an ALJ. *Id.* at 23-53. The ALJ also heard testimony from a  
25 medical expert and a vocational expert. *Id.* at 32-38, 48-52. On May 20, 2011, the  
26 ALJ denied plaintiff’s claim for benefits. *Id.* at 12-19. Plaintiff filed a request for  
27 review, which was denied by the Appeals Council on August 16, 2012. *Id.* at 1-3.

1 Plaintiff filed a complaint in this court on October 11, 2012. On May 28,  
2 2013, based upon the parties' Stipulation to Voluntary Remand Pursuant to  
3 Sentence Four of 42 U.S.C. § 405(g) ("Stipulation"), this court ordered that the  
4 complaint be remanded for further proceedings consistent with the terms of the  
5 Stipulation.

6 In accordance with the order remanding the case, on July 23, 2013, the  
7 Appeals Council vacated the May 2011 decision and remanded the case. *Id.* at  
8 594-97. The Appeals Council ordered the ALJ to update the treatment evidence,  
9 apply the presumption of continuing non-disability pursuant to *Chavez v. Bowen*,  
10 844 F.2d 691 (9th Cir. 1988), and proceed again through steps two through five.  
11 *Id.* at 595-96. The Appeals Council also ordered ALJ to articulate how she has  
12 evaluated plaintiff's credibility, identify which, if any, subjective symptoms are  
13 not credible, and explain why they are not credible. *Id.* at 596.

14 On April 30, 2014, plaintiff, represented by counsel, and a vocational expert  
15 testified at a hearing before a different ALJ. *Id.* at 536-52. On July 3, 2014, the  
16 ALJ again denied plaintiff's claim for benefits. *Id.* at 483-96.

17 Applying the well-known five-step sequential evaluation process, the ALJ  
18 found, at step one, that plaintiff had not engaged in substantial gainful activity  
19 since December 24, 2008, the alleged disability onset date. *Id.* at 487.

20 At step two, the ALJ found plaintiff suffered from the following severe  
21 impairments: diabetes mellitus, Type II; diabetic peripheral neuropathy affecting  
22 the feet; right eye diabetic retinopathy; bilateral carpal tunnel syndrome; history of  
23 decreased range of motion in the shoulder; osteoarthritis in the bilateral knees;  
24 osteoarthritis of the bilateral hips; hypertension; cervicgia; degenerative disc  
25 disease and degenerative joint disease of the lumbar spine; right-sided sciatica;  
26 and status-post right eye surgery. *Id.*

27 At step three, the ALJ found that plaintiff's impairments, whether  
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1 individually or in combination, did not meet or medically equal one of the listed  
2 impairments set forth in 20 C.F.R. part 404, Subpart P, Appendix 1 (the  
3 “Listings”). *Id.* at 488-89.

4 The ALJ then assessed plaintiff’s residual functional capacity (“RFC”),<sup>1</sup> and  
5 determined that she had the RFC to perform less than the full range of light work.  
6 *Id.* at 489. The ALJ limited plaintiff to: lift/carry/push/pull twenty pounds  
7 occasionally and ten pounds frequently; stand/walk for six hours out of an eight-  
8 hour workday, thirty minutes at a time, broken down to three hours of walking and  
9 three hours of standing; sit six hours out of an eight-hour workday, one hour at a  
10 time; frequent pushing or pulling; occasional postural activities such as climbing,  
11 balancing, stooping, kneeling, crouching, and crawling; and frequent bilateral  
12 handling and fingering. *Id.* In addition, the ALJ precluded plaintiff from ladders,  
13 rope, scaffolds, work environments requiring visual acuity for safety, work  
14 requiring precise depth or binocular vision; and concentrated hazards such as  
15 machinery or heights. *Id.*

16 The ALJ found, at step four, that plaintiff was unable to perform her past  
17 relevant work as a shipping checker and mail handler. *Id.* at 494.

18 At step five, the ALJ found there were jobs that existed in significant  
19 numbers in the national economy that plaintiff could perform, including order  
20 clerk, charge account clerk, and document preparer/scan technician. *Id.* at 495.  
21 Consequently, the ALJ concluded that plaintiff did not suffer from a disability as  
22 defined by the Social Security Act (“SSA”). *Id.* at 496.

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24 <sup>1</sup> Residual functional capacity is what a claimant can do despite existing  
25 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152,  
26 1155-56 n.5-7 (9th Cir. 1989). “Between steps three and four of the five-step  
27 evaluation, the ALJ must proceed to an intermediate step in which the ALJ  
28 assesses the claimant’s residual functional capacity.” *Massachi v. Astrue*, 486  
F.3d 1149, 1151 n.2 (9th Cir. 2007).

1 Plaintiff filed a timely request for review of the ALJ's decision, which was  
2 denied by the Appeals Council. *Id.* at 442-44. The ALJ's decision stands as the  
3 final decision of the Commissioner.

### 4 III.

#### 5 STANDARD OF REVIEW

6 This court is empowered to review decisions by the Commissioner to deny  
7 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security  
8 Administration must be upheld if they are free of legal error and supported by  
9 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)  
10 (as amended). But if the court determines that the ALJ's findings are based on  
11 legal error or are not supported by substantial evidence in the record, the court  
12 may reject the findings and set aside the decision to deny benefits. *Aukland v.*  
13 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d  
14 1144, 1147 (9th Cir. 2001).

15 "Substantial evidence is more than a mere scintilla, but less than a  
16 preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such  
17 "relevant evidence which a reasonable person might accept as adequate to support  
18 a conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276  
19 F.3d at 459. To determine whether substantial evidence supports the ALJ's  
20 finding, the reviewing court must review the administrative record as a whole,  
21 "weighing both the evidence that supports and the evidence that detracts from the  
22 ALJ's conclusion." *Mayes*, 276 F.3d at 459. The ALJ's decision "cannot be  
23 affirmed simply by isolating a specific quantum of supporting evidence."  
24 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th  
25 Cir. 1998)). If the evidence can reasonably support either affirming or reversing  
26 the ALJ's decision, the reviewing court "may not substitute its judgment for that  
27 of the ALJ." *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.  
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1 1992)).

## 2 IV.

### 3 DISCUSSION

4 Plaintiff argues the ALJ failed to properly consider her credibility. P. Mem.  
5 at 3-10. Specifically, plaintiff contends the ALJ failed to identify which  
6 statements he accepted and rejected, and also failed to state clear and convincing  
7 reasons for finding her less credible. *Id.*

8 An ALJ must make specific credibility findings, supported by the record.  
9 Social Security Ruling 96-7p. To determine whether testimony concerning  
10 symptoms is credible, an ALJ engages in a two-step analysis. *Lingenfelter v.*  
11 *Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). First, an ALJ must determine  
12 whether a claimant produced objective medical evidence of an underlying  
13 impairment ““which could reasonably be expected to produce the pain or other  
14 symptoms alleged.”” *Id.* at 1036 (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344  
15 (9th Cir. 1991) (en banc)). Second, if there is no evidence of malingering, an  
16 “ALJ can reject the claimant’s testimony about the severity of her symptoms only  
17 by offering specific, clear and convincing reasons for doing so.”<sup>2</sup> *Smolen v.*  
18 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); accord *Burrell v. Colvin*, 775 F.3d  
19 1133, 1136 (9th Cir. 2014).

20 An ALJ may consider several factors in weighing a claimant’s credibility,  
21 including: (1) ordinary techniques of credibility evaluation such as a claimant’s  
22 reputation for lying; (2) the failure to seek treatment or follow a prescribed course  
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24 <sup>2</sup> Defendant argues the ALJ was only required to provide specific reasons  
25 supported by substantial evidence, rather than clear and convincing reasons, as the  
26 clear and convincing standard is contrary to 42 U.S.C. § 405(g) and SSR 96-7p.  
27 D. Mem. at 3. But as defendant acknowledges, the Ninth Circuit has explicitly  
28 rejected that argument. *See Burrell*, 775 F.3d at 1136-37. Accordingly, the court  
applies the clear and convincing standard.

1 of treatment; and (3) a claimant's daily activities. *Tommasetti v. Astrue*, 533 F.3d  
2 1035, 1039 (9th Cir. 2008); *Bunnell*, 947 F.2d at 346-47. The lack of objective  
3 medical evidence to support allegations of limitations is also a factor that may be  
4 considered when evaluating credibility, but it may not be the only factor  
5 considered. *See Rollins v. Massanari*, 261 F.3d 853, 856-57 (9th Cir. 2001) (lack  
6 of corroborative objective medical evidence may be one factor in evaluating  
7 credibility); *Bunnell*, 947 F.2d at 345 (an ALJ "may not reject a claimant's  
8 subjective complaints based solely on a lack of objective medical evidence to fully  
9 corroborate the alleged severity of pain").

10 Here, at the first step, the ALJ found plaintiff's medically determinable  
11 impairments could reasonably be expected to cause the symptoms alleged. AR at  
12 490. At the second step, because the ALJ did not find any evidence of  
13 malingering, the ALJ was required to provide clear and convincing reasons for  
14 discounting plaintiff's credibility.

15 The ALJ provided three reasons for discounting plaintiff's credibility: (1)  
16 her alleged limitations were inconsistent with her activities of daily living; (2) she  
17 stopped working because she was laid off; and (3) the objective medical evidence  
18 did not support her alleged symptoms. *Id.* at 490. These reasons are largely clear  
19 and convincing and supported by substantial evidence.

20 As an initial matter, contrary to plaintiff's contention, the ALJ identified  
21 which statements he rejected. The ALJ stated that he did not find plaintiff's  
22 allegations at the hearing and in her exertional questionnaire regarding the  
23 intensity, persistence, and limiting effects of her symptoms to be fully credible.  
24 *Id.* The ALJ noted plaintiff testified at the hearing that, due to her impairments,  
25 she was unable to work. *Id.*; *see id.* at 543. The ALJ recounted that plaintiff  
26 testified and reported she was disabled due to "symptoms of pain, neuropathy in  
27 her feet and legs, sciatica, dry mouth, shakiness, frequent use of the restroom, and  
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1 poor vision”; and “further claimed she was limited in her ability to sit more than  
2 20 minutes, stand more than 15 minutes, walk more than a few feet, perform  
3 overhead movements, gripping, grasping, reaching behind her, and lifting more  
4 than five pounds.” *Id.* at 490; *see id.* at 168-71, 541-57. In addition to identifying  
5 these reported symptoms generally and noting he found them not fully credible,  
6 the ALJ specifically discounted the limiting effects of many of these alleged  
7 symptoms in giving his reasons for finding plaintiff less than fully credible, as set  
8 forth below.

9       The ALJ’s first reason for discounting plaintiff’s credibility was that her  
10 alleged limitations were inconsistent with her activities of daily living. *Id.* at 490.  
11 Plaintiff testified she could do the dishes, make the bed, and microwave food. *See*  
12 *id.* at 540. In her exertional questionnaire, plaintiff stated she made her bed,  
13 wiped the table, and microwaved food, but she required help with her personal  
14 hygiene and could walk for about three to five minutes at a time. *See id.* at 168-  
15 69. In discounting plaintiff’s credibility, the ALJ relied on a treatment note, dated  
16 June 19, 2012, in which plaintiff reported she was able to independently bathe,  
17 dress, use the restroom, ambulate, and feed herself. *Id.* at 490; *see id.* at 677. A  
18 separate treatment note reflected the same. *See id.* at 667. The ALJ found these  
19 tasks involved grasping, reaching behind, and overhead reaching, and were  
20 therefore were inconsistent with plaintiff’s testimony. *See id.* at 490. The ability  
21 to feed herself, bathe, dress, and use the restroom as reported in the treatment note  
22 is not inconsistent with plaintiff’s testimony that she microwaved food and did  
23 light chores. But the treatment note indicating she could independently bathe and  
24 dress and use the restroom is inconsistent with her statement in the questionnaire  
25 that she required help with her personal hygiene. *See id.* at 168, 677. In addition,  
26 plaintiff testified her pain and limitations were so severe that she had difficulty  
27 lifting her arms to wash her hair and was sometimes unable even to hold a cup,  
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1 and that she was unable to reach behind herself or above her shoulders. *Id.* at 546-  
2 48. As such, the ALJ's finding that plaintiff's daily activities were inconsistent  
3 with the extent of her alleged limitations is a partially clear and convincing reason  
4 for discounting her credibility.

5 The ALJ's second reason for finding plaintiff less credible – that her alleged  
6 limitations were not what caused her to stop work – was clear and convincing and  
7 supported by substantial evidence. *See id.* at 490; *Bruton v. Massanari*, 268 F.3d  
8 824, 828 (9th Cir. 2001) (as amended) (the fact that claimant stopped working  
9 because he was laid off rather than due to his injuries was a sufficient reason for  
10 disregarding his testimony); *Drouin v. Sullivan*, 966 F.2d 1255, 1258 (9th Cir.  
11 1992) (claimant was not credible, in part, because she did not lose her jobs  
12 because of her pain). As plaintiff testified at the April 2011 hearing, she stopped  
13 working on December 23, 2008 because she was laid off. AR at 27-28. Indeed,  
14 plaintiff testified that she indicated she was willing and able to work in her  
15 application for unemployment benefits. *Id.* at 28. Therefore, although plaintiff  
16 alleged at the April 2014 hearing that she was unable to return to work due to her  
17 severe pain and other impairments (*id.* at 543), the ALJ reasonably concluded that  
18 since she stopped work in December 2008 because the facility that employed her  
19 closed, “[t]his raises the issue as to whether [plaintiff’s] ongoing unemployment is  
20 the result of her alleged impairments or an unrelated reason, particularly given  
21 [plaintiff’s] alleged onset date is the same month and year she lost employment.”  
22 *Id.* at 490.

23 The ALJ's final reason for finding plaintiff less than fully credible – and the  
24 reason the ALJ stated was the most important (*id.* at 490) – was that the objective  
25 medical evidence did not support her alleged limitations. *Id.* at 490-92.  
26 Substantial evidence supports the ALJ's finding. As the ALJ noted, although the  
27 objective medical evidence indicated plaintiff suffered from multiple impairments  
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1 including hypertension and diabetes, the evidence did not support limitations as  
2 severe as plaintiff alleged. *See, e.g.*, AR at 225, 233.

3 The ALJ noted the record reflected that plaintiff's diabetes was not under  
4 control and she suffered from various complications of diabetes, but there was no  
5 evidence of end-organ damage. *Id.* at 490-91. As plaintiff alleged, she suffered  
6 from neuropathy in her lower extremities. Testing revealed early signs of distal  
7 diabetic vascular disease, but plaintiff did not appear to suffer limiting  
8 complications from it at the time. *Id.* at 792. The objective evidence showed  
9 decreased sensation in the feet, wound healing in the foot was likely in the event  
10 of wound, mild bilateral osteoarthritis of the hips, enthesopathy of the iliac wings,  
11 mild bilateral osteoarthritis of the knees, and tenderness. *See id.* at 658, 733, 823,  
12 867. Plaintiff also had full range of motion in the knee, ankle, and hips, with only  
13 pain in abduction in hips and mild crepitus in knees. *See id.* at 657, 824, 867. As  
14 such, the ALJ found that "despite [plaintiff's] complaints of pain and numbness in  
15 her feet and legs, physical exam findings were largely within normal limits aside  
16 from decreased sensation in her feet." *Id.* at 491. Because the objective findings  
17 were primarily normal or mild, substantial evidence supports the ALJ's finding  
18 that plaintiff's limitations relating to her lower extremities were not as severe as  
19 alleged.

20 Plaintiff also cited her poor vision as a reason she could not work, claiming  
21 she was unable even to read. *Id.* at 490, 553-55. Plaintiff suffered from various  
22 vision problems including diplopia, double vision, blurry vision, uveitis, diabetic  
23 retinopathy, and cataracts. *See, e.g., id.* at 223-24, 433, 690. Plaintiff had cataract  
24 surgery in 2011 and pars plana vitrectomy, membrane peel, and surgery for repair  
25 of retinol detachment in 2013. *Id.* at 433, 690. The consultative examiner  
26 reviewed these records and performed a vision exam on plaintiff and found that  
27 these vision problems resulted in decreased visual acuity but did not preclude  
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1 plaintiff from work. *Id.* at 659. Consequently, the ALJ found plaintiff “would  
2 have visual acuity related limitations but not that would preclude her from all  
3 work.” *Id.* at 491.

4 As for plaintiff’s alleged pain and upper extremity impairments, plaintiff  
5 consistently sought treatment for pain in her back and shoulders. Prior to the  
6 alleged onset date, in 2006 and 2007, plaintiff underwent surgery on both  
7 shoulders. *Id.* at 297, 317. Plaintiff was working at the time of the surgeries and  
8 nothing in the record suggests that plaintiff’s shoulder pain was worse after the  
9 surgery. Images taken after the alleged onset date revealed mild or minimal  
10 findings. Images from 2009 reflect normal findings for the elbows, probable  
11 minimal osteoarthritis in the hands, and mild degenerative joint disease or  
12 degenerative changes in the shoulders. *Id.* at 229-32, 238. Images from 2010  
13 reflect normal findings for the shoulders. *Id.* at 288. Images from 2011 show  
14 minimal degenerative disk disease at L5-S1 with 10 mm right L5-S1 foraminal  
15 tear and mild degenerative facet joint hypertrophy in the lower lumbar spine. *Id.*  
16 at 835. Images from 2013 also reflect normal findings in the back. *Id.* at 735.  
17 Plaintiff’s treatment notes indicate that, at times, plaintiff had a limited range of  
18 motion, tenderness, and adhesive capsulitis in her upper extremities. *See, e.g., id.*  
19 at 286, 289. But on other occasions, plaintiff had full range of motion in her neck  
20 and wrist. *See, e.g., id.* at 289, 816-17. Physicians also reported that plaintiff had  
21 normal ambulation on several occasions. *See id.* at 245, 828. The ALJ cited this  
22 medical evidence in determining plaintiff’s “alleged upper extremity impairments  
23 would not preclude her from all work,” and her shoulder and back limitations were  
24 consistent with plaintiff’s determined RFC and not total disability. *Id.* at 491-92.

25 Although the evidence clearly reflects that plaintiff had limitations due to  
26 vision problems, neuropathy, and shoulder, leg, back, and foot pain, the evidence  
27 reasonably supports the ALJ’s finding that the objective evidence did not support  
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1 the severe limitations alleged by plaintiff. As such, the reviewing court may not  
2 substitute its judgment for that of the ALJ. *See Aukland*, 257 F.3d at 1035.

3 In sum, the ALJ cited multiple clear and convincing reasons supported by  
4 substantial evidence for finding plaintiff less than fully credible.

5 V.

6 **CONCLUSION**

7 IT IS THEREFORE ORDERED that Judgment shall be entered  
8 AFFIRMING the decision of the Commissioner denying benefits, and dismissing  
9 the complaint with prejudice.

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11 DATED: May 25, 2016



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13 SHERI PYM  
United States Magistrate Judge  
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